

These are the tentative rulings for civil law and motion matters set for Tuesday, July 21, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, July 20, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances are governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.**

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**1. CU14-080750 Glisson, Michael vs. Superior Court of Cal., Nevada County**

Defendant's Demurrer to Second Amended Complaint is continued on the court's own motion to August 4, 2015, at 8:30 a.m. in Department 42, to be heard by the Honorable Charles D. Wachob.

**2. M-CV-0046744 Dixie Home Group vs. Abba, Mo, et al**

Appearance required on July 21, 2015, at 8:30 a.m. in Department 40.

**3. M-CV-0063469 Buisson, Linda vs. Deloach, Heather, et al**

Defendants' Demurrer to Complaint is continued to July 28, 2015, at 8:30 a.m. in Department 40.

Defendants' demurrer was originally noticed for hearing on July 28, 2015. Plaintiff subsequently filed an *ex parte* application to advance the hearing date to July 21, 2015, which was granted. However, there is no proof of service in the court's file showing service of the order advancing the hearing date on defendants. Accordingly, the matter will proceed on the originally scheduled hearing date of July 28, 2015.

**4. S-CV-0029141 Cooley, David, et al vs. Centex Homes**

Troy Scott's Custom Grading, Inc.'s Motion for Determination of Good Faith Settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985)

38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling party's proportionate share of liability for plaintiffs' injuries, and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

**5. S-CV-0031031 Dangerfield, Willis, et al vs. Woodside, Inc., et al**

Defendant Mackay & Somps Civil Engineers, Inc.'s Demurrer to First Amended Complaint is overruled.

A demurrer may be used only to challenge defects that appear on the face of the pleading under attack, or from matters outside of the leadings that are judicially noticeable. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. No other extrinsic evidence can be considered. *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.

Defendant's demurrer asks the court to consider facts stated in the declaration of counsel in support of the demurrer. However, defendant points to no allegations of the first amended complaint, or other judicially noticeable facts, which assert that defendant is a person holding a valid registration as a professional engineer issued pursuant to Business and Professions Code sections 6700 *et seq.* for the purposes of compliance with Code of Civil Procedure section 411.35. As the court may not consider the declaration of counsel in ruling on this demurrer, the demurrer must be overruled.

Defendant Mackay & Somps Civil Engineers, Inc. shall file and serve its answer to the first amended complaint by no later than August 7, 2015.

**6. S-CV-0032637 Boyett Const., Inc. vs. Allianz Global Risks U.S. Insurance**

The Motion for Summary Judgment is continued on the court's own motion to July 28, 2015, at 8:30 a.m. in Department 40.

**7. S-CV-0033669 Lisotta, Frank, et al vs. Cook, Henry, et al**

Plaintiff's Motion to Deny Judicial Confirmation of Purported Good Faith Settlement is granted.

Dance Hall Investors, Inc. dba Keller Williams Realty and Kelly Groth, on one hand, and Henry Cook, Betty Cook and Carolyn Bellacera, on the other hand, have filed a notice of settlement and request for good faith settlement determination pursuant to Code of Civil Procedure section 877.6. The settling parties have asserted cross-claims against each other for indemnity based on the alleged claims of plaintiffs in this action. Having settled as between each other, moving parties request an order finding the settlement to be in good faith, and forever barring any and all claims asserted in this action by any party, including plaintiffs.

The order requested is not permissible under Code of Civil Procedure section 877.6. Pursuant to that code section, a determination of good faith settlement between plaintiff or claimant and one or more alleged tortfeasors bars any other joint tortfeasor or co-obligor from

further claims against the settling tortfeasor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault. Nothing in Code of Civil Procedure section 877.6 permits joint tortfeasors to settle amongst each other, and thereby cut off plaintiff's ability to seek damages against them.

**8. S-CV-0034321 Taylor, Ernest vs. Ramos, Cecilia, et al**

Defendants' Motion to Dismiss Complaint or Compel Plaintiff to Hire Counsel is denied.

Defendants contend that after the filing of this lawsuit, plaintiff formed a limited liability company in the name of current plaintiff DBA Left Coast Green. This fact by itself does not support the conclusion that the newly formed limited liability company must be substituted in as the appropriate plaintiff in this action. Further, hearsay statements purportedly made by plaintiff to staff with defense counsel's office cannot be considered by this court as evidence of an assignment of claims.

**9. S-CV-0034586 Epic HR, Inc. vs. Alves, Steven G.**

In light of the court's ruling on the motion to continue trial and pending discovery disputes, the court finds good cause to continue the motion for summary judgment to November 5, 2015 at 8:30 a.m. in Department 40.

**10. S-CV-0034589 Pfeiffer, Charitie vs. Safeway, Inc.**

The Motion to be Relieved as Counsel is dropped, as no moving papers were filed with the court.

**11. S-CV-0034645 Mitchell, Nancy J. vs. Winchester Country Club**

Plaintiff's Motion to Compel Responses to Requests for Admission is granted.

As a preliminary matter, the court finds the motion to have been timely served. Code of Civil Procedure section 2033.290(c) requires a notice of a motion to compel further responses to requests for admission to be given within 45 days of service of the verified responses (plus five days based on service by mail of the responses). In this case, the responses were verified as of April 27, 2015. Notice of this motion was served on June 16, 2015, which was 50 days after service of the responses by mail.

If a responding party gives lack of information or knowledge as a reason for the failure to admit all or part of the request, the responding party must also state in the answer that a reasonable inquiry concerning the matter has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter. Code Civ. Proc. § 2033.220(c). Responding party is required to make a reasonable investigation in order to determine whether or not it will dispute the matters involved at trial. *Chodos v. Superior Court for Los Angeles County* (1963) 215 Cal.App.2d 318, 323.

Plaintiff demonstrates that intervenor's responses to the duly-served requests for admission were incomplete, inadequate or evasive. Code Civ. Proc. § 2033.290(a)(1). Intervenor's responses fail to comply with the requirements of Code of Civil Procedure section 2033.220(c). Further, intervenor has not satisfied its burden of justifying the objections set forth in the responses.

Plaintiff's request for sanctions is denied. Intervenor shall serve further responses to the subject requests for admission on or before August 7, 2015.

**12. S-CV-0035019 Owens, James vs. Wallcovering Services Inc.**

Plaintiff's Motion for Amendments to Complaint is granted.

The complaint shall be amended to substitute defendant Commercial Wallcovering Services Inc. in place of named defendant Wallcovering Services Inc. Plaintiff is also given leave to substitute defendant Leland M. Caveza as Doe 1.

**13. S-CV-0035049 Noble, Skylar vs. Equity Link, Inc., et al**

The Motion to be Relieved as Counsel by Daniel M. Karalash, Esq. and Strategic Law Command is denied without prejudice.

California Rules of Court, rule 3.1362(d) requires service of the motion to be relieved on the client by personal service or mail. In this case, Mr. Karalash has filed a proof of service which indicates that defendant Equity Link, Inc. was served by electronic service only, which does not comply with the applicable California Rules of Court.

**14. S-CV-0035235 Anderson, Daniel B., et al vs. Winter, Gregory**

Plaintiffs Daniel and Jody Anderson's Motion to Strike Portions of Cross Complaint is denied.

The policy of the law is to construe the pleadings "liberally ... with a view to substantial justice." CCP § 452. In ruling on a motion to strike, "judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth." *Clauson v. Sup.Ct. (Pedus Servs., Inc.)* (1998) 67 Cal.App.4th 1253, 1255.

Defendant's First Amended Cross-Complaint alleges that Plaintiff Daniel Anderson intentionally misrepresented the nature of his deal with Defendant. It alleges that Plaintiff fraudulently obtained Defendant's life savings by promising a tenancy in common that Plaintiff had no intention of honoring. With these factual allegations as truth, exemplary damages may be awarded due to Plaintiff's "intentional misrepresentation, deceit, or concealment of a material fact known to [Plaintiff] with the intention on the part of [Plaintiff] of thereby depriving a person of property...." Cal. Civ. Code § 3294(c).

Plaintiffs are allowed time to file an answer to the First Amended Cross-Complaint. CCP § 472a(d). The answer shall be filed by August 7, 2015.

**15. S-CV-0035755 Gray, Deanna vs. Pacific Air Cond. Heating, Inc., et al**

Defendant's Demurrer to First Amended Complaint is overruled in part, and sustained in part without leave to amend.

A party may demur to the complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. Plaintiff's allegations must be accepted as true for the purpose of ruling on the demurrer, no matter how improbable. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

The demurrer is overruled with respect to the first, second, third, fourth, fifth, sixth, seventh, eighth, and twelfth causes of action. The first amended complaint (FAC), read as a whole, alleges sufficient facts to assert alter ego liability against Graham. The FAC also alleges sufficient facts to support the allegation that plaintiff acted as, and was treated as, an employee of defendant Essential Retail Services (ERS). In addition, plaintiff alleges sufficient minimal facts to support her claims of discrimination, harassment and retaliation on the basis of age. To allege a prima facie case of age discrimination, plaintiff must allege facts giving rise to an inference of unlawful discrimination, which could include the fact that other employees under the age of 40 were retained, even though they committed the same purported violations for which plaintiff's employment was terminated. *See Gibbs v. Consolidated Svcs.* (2003) 111 Cal.App.4th 794, 799.

The demurrer is sustained without leave to amend as to plaintiff's ninth cause of action for breach of the implied covenant of good faith and fair dealing, and tenth cause of action for breach of contract, with respect to defendant ERS. These claims are based on a written agreement between plaintiff and defendants, but the FAC fails to adequately plead the existence of any such agreement with ERS. With respect to the remaining defendants, the demurrer to the ninth and tenth causes of action is overruled.

Finally, the demurrer is sustained without leave to amend with respect to plaintiff's eleventh cause of action for intentional infliction of emotional distress. An employee cannot maintain a civil action for intentional infliction of emotional distress against her employer when the claim is based on conduct normally occurring in the workplace. *Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148, 155-157. In addition, plaintiff fails to allege extreme and outrageous conduct by defendants with the intention of causing, or reckless disregard of the probability of causing, emotional distress, meaning conduct so extreme as to exceed all bounds usually tolerated in a civilized community. *KOVR-TV, Inc. v. Superior Court* (1995) 31 Cal.App.4th 1023, 1028.

Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. Plaintiff has failed to cure certain defects which were noted by the court

in ruling on defendant's previous demurrer to the complaint, and fails to suggest any manner in which the defects could be cured if she were again given leave to amend. Accordingly, the demurrer is sustained without leave to amend.

**16. S-CV-0036203 Tyson, Leonard K. vs. Westerhouse, Patrick Joseph**

Defendant's request for judicial notice is denied as to Exhibit A, and granted as to Exhibit B. Plaintiff's request for judicial notice is denied, as the documents of which judicial notice is requested are not relevant to any issues on this demurrer.

Defendant's Demurrer to Complaint is overruled. Defendant demurs to the complaint in this action on collateral estoppel grounds. Collateral estoppel is applicable to bar relitigation of issues previously litigated between the same parties or their privies on a different cause of action if the issues for which collateral estoppel is sought in the second action: (1) are identical to those litigated in the first action; (2) were actually litigated and necessarily decided in determining the first action; (3) are asserted against a participant in the first action or one in privity with that party; and (4) the former decision was final on the merits. (*McCutchen v. City of Montclair* (1999) 73 Cal.App.4th 1138, 1145.)

Defendant identifies the issue that was previously determined to be the issue of the characterization of a gift of money from third party Blanche Woelffel. The issue presented by the complaint in this action is whether defendant conspired with plaintiff's former wife to hide particular assets from him. The complaint in this action does not establish that these issues are identical for purposes of collateral estoppel. Nor does defendant establish that the issue was actually litigated and necessarily decided in the first action. In prior dissolution proceedings, plaintiff withdrew his request that the court determine the character of a particular gift. Further, defendant does not establish that defendant in this action was in privity with plaintiff's former wife in the prior dissolution proceedings.

Defendant's alternative motion to strike is denied as the complaint does not disclose on its face that particular matter sought to be stricken is false, improper or irrelevant. Defendant's alternative request to stay the action is denied.

**17. S-CV-0036305 Fairchild, Crystal vs. Strikes Unlimited, Inc.**

The Motion to Strike Punitive Damages was continued by stipulation of the parties to August 25, 2015, at 8:30 a.m. in Department 40.

**18. S-CV-0036433 Bluth, Charles P., Trustee, et al vs. Tahoe Inn, LLC**

The OSC re Appointment of Receiver was continued by stipulation of the parties to August 25, 2015, at 8:30 a.m. in Department 40.

**19. S-CV-0036437 Duncan, Bruce vs. Nationstar Mortgage, LLC**

Appearance required on July 21, 2015, at 8:30 a.m. in Department 40.

**20. T-CV-0001965 Loveless, W., et al vs. The Tavern Shores Association, et al**

**Motion to Compel Further Responses to Request for Production of Documents, Set Three**

Plaintiffs move to compel further responses to their Request for Production of Documents, Set Three, directed to defendant The Tavern Shores Association (“Tavern Shores”).

As a preliminary matter, the court acknowledges several issues attributable to plaintiffs’ filings. Plaintiffs initially filed a notice of motion stating an incorrect hearing date, and two varying times for the hearing. Plaintiffs subsequently filed a “re-notice” of motion with the correct hearing date and time. However, the “re-notice” was not served so as to provide sufficient notice of the hearing date pursuant to Code of Civil Procedure section 1005. Plaintiff’s attorney has signed a proof of service as to the “re-notice” stating that personal service was made on counsel for defendants on June 21, 2015, a Sunday, which appears to be a typo. Even if service was actually effected to two law firms on a Sunday, this would still be insufficient notice. Plaintiffs’ moving papers also fail to attach the subject discovery requests or responses. In any event, although Tavern Shores raises an objection on the grounds of insufficient notice, it has also substantively opposed the motion, and does not contend that it has been prejudiced by the late service. Therefore, the court shall exercise its discretion and consider the motion on its merits.

The discovery requests at issue seek documents from Tavern Shores related to parking, architectural guidelines, impervious areas, ADA requirements for carport units, the expansion of Unit 238, and open meeting laws. Tavern Shores objected to each request on the grounds that the documents were equally available to plaintiffs, and objected to most requests on the grounds that the request was not reasonably calculated to lead to the discovery of admissible evidence, and was not relevant to the subject matter of the litigation.

Tavern Shores bears the burden of justifying its objections to the discovery. *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98. Tavern Shores’ conclusion that all documents requested by plaintiffs were provided to them at some point in the past by virtue of their ownership of property at Tavern Shores is not supported by any credible evidence. Tavern Shores’ contention that discovery should not extend beyond the specific allegations of the first amended complaint is not persuasive. In short, Tavern Shores has not satisfied its burden of justifying its objections.

While there is some indication that some documents were promised or provided after the filing of this motion, the court has not been made aware of any amended responses to the subject discovery. Informal statements by counsel do not substitute for verified responses in compliance with the Code of Civil Procedure.

Plaintiffs’ Motion to Compel is granted. Tavern Shores shall serve amended verified responses to Request for Production of Documents, Set Three, which remove the objections, and comply with Code of Civil Procedure sections 2031.210, *et seq.*, and shall produce responsive documents, on or before July 31, 2015.

With respect to the parties' respective requests for sanctions, although plaintiffs are the prevailing party, Tavern Shores complains that plaintiffs failed to adequately meet and confer prior to bringing this motion. This contention has merit. The discovery responses were served on May 22, 2015. On May 21, 2015, plaintiffs were advised that Tavern Shores' attorney would be on a prepaid vacation during the week of June 15. Nevertheless, plaintiffs' attorney sent a meet and confer communication on June 10, demanding that supplemental responses and documents be produced within five business days, a deadline which fell in the middle of the week during which plaintiffs had already been advised counsel would be unavailable. Plaintiffs' motion was then filed prior to the expiration of the five-day deadline. The court agrees that plaintiffs' counsel failed to adequately meet and confer prior to filing the instant motion. In light of the actions of all parties involved, the respective requests for sanctions are denied.

Motion to Compel Further Responses to Request for Production of Documents, Set Four

Plaintiffs move to compel further responses to their Request for Production of Documents, Set Four, directed to defendant Tavern Shores.

The subject discovery request consists of one request for production of documents, which asks Tavern Shores to produce "all documents identified in response to Form Interrogatory 17.1." In response, Tavern Shores objected on the grounds that the request was not "complete in and of itself", was vague and ambiguous, and not reasonably particularized.

Tavern Shores served responses to Form Interrogatory No. 17.1 which identify certain documents as supporting its denials of requests for admission. Tavern Shores argues that the request is not clear as to which parties' responses to the form interrogatory are at issue. While this is a fair point, any purported confusion was clarified by plaintiffs' June 10, 2015, meet and confer email which advised that the request "seeks all documents that defendant TS identified in response to Form Interrogatory 17.1". Tavern Shores' remaining objections lack merit.

Plaintiffs' Motion to Compel is granted. Tavern Shores shall serve amended verified responses to Request for Production of Documents, Set Four, which remove the objections, and comply with Code of Civil Procedure sections 2031.210, *et seq.*, and shall produce responsive documents, on or before July 31, 2015.

With respect to the parties' respective requests for sanctions, although plaintiffs are the prevailing party, Tavern Shores complains that plaintiffs failed to adequately meet and confer prior to bringing this motion. This contention has merit. The discovery responses were served on June 4, 2015. On May 21, 2015, plaintiffs were advised that Tavern Shores' attorney would be on a prepaid vacation during the week of June 15. Nevertheless, plaintiffs' attorney sent a meet and confer communication on June 10, demanding that supplemental responses and documents be produced within five business days, a deadline which fell in the middle of the week during which plaintiffs had already been advised counsel would be unavailable. Plaintiffs' motion was then filed on June 22, the day Tavern Shores' attorney returned from vacation. The court agrees that plaintiffs' counsel failed to adequately meet and confer prior to filing the instant motion. In light of the actions of all parties involved, the respective requests for sanctions are denied.



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